

STATE OF SOUTH CAROLINA  
BEFORE THE PUBLIC SERVICE COMMISSION

DOCKET NO. 2017-305-E

In the Matter of:	)	
	)	
	)	OPPOSITION TO SOUTH CAROLINA
Request of South Carolina Office of	)	ELECTRIC AND GAS COMPANY'S
Regulatory Staff for Rate Relief to	)	MOTION TO DISMISS
SCE&G Rates Pursuant to S.C.	)	
Code Ann. § 58-27-920	)	

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The South Carolina Coastal Conservation League, pursuant to S.C. Code Ann. Regs. 103-829 and Order No. 2017-68-H, submits this Brief in Opposition to South Carolina Electric & Gas's ("SCE&G") Motion to Dismiss the Request for Rate Relief filed by the South Carolina Office of Regulatory Staff ("ORS").

**BACKGROUND**

On August 1, 2017 SCE&G announced its decision to cease construction of V.C. Summer nuclear units 2 and 3. That same day, SCE&G filed a petition for a "Prudency Determination Regarding Abandonment, Amendments to the Construction Schedule, Capital Cost Schedule and Other Terms of the BLRA Orders for the V.C. Summer Units 2 & 3 and Related Matters," which the Commission assigned to Docket 2017-244-E. SCE&G also filed a notice of intent to file a request for revised rates under the Base Load Review Act, which the Commission assigned to Docket 2017-246-E.

Following a motion by the Office of Regulatory Staff ("ORS") to dismiss SCE&G's petition and notice of intent, and following requests by several public officials for an opportunity to review the decisions leading to the abandonment of the new nuclear project, SCE&G on

August 15, 2017 withdrew the petition and notice. SCE&G has reserved the right to refile petitions related to the abandonment of the project and to request revised rates.

On September 26, 2017, the ORS filed a Request for Rate Relief (the “Request”) pursuant to S.C. Code Ann. § 58-27-920, asking the Commission to order SCE&G to immediately suspend collection of all rates revised under the Base Load Review Act (“BLRA”), and—if the BLRA is amended, repealed, or declared unconstitutional—to order SCE&G to cease and desist from collecting revised rates and to refund prior revised rates to customers.

CCL petitioned to intervene in the proceeding to ensure its members’ interest in promoting prudent resource planning and in promoting clean energy resources for customer bill relief is represented. On October 11, 2017, the Commission granted CCL’s request to intervene.

### **POSITION AND ARGUMENT**

CCL opposes SCE&G’s Motion to Dismiss. The Commission has broad general authority to supervise and regulate rates of all public utilities in the state, including SCE&G. S.C. Code Ann. § 58-3-140(A). CCL agrees that the revised rates section ORS has invoked is valid,<sup>1</sup> and that the Commission has the ability to suspend and set new rates should ORS provide sufficient evidence to support the request.<sup>2</sup> ORS raises important questions about whether SCE&G should be allowed to continue to collect revised rates, especially given the possibility that SCE&G is benefiting from nondisclosure: “it is being alleged that SCE&G failed to disclose information that should have been disclosed and that would have appeared to provide a basis for

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<sup>1</sup> See Docket No. 2017-305-E, ORS’s Response in Opposition to the Motion to Dismiss at 2, Oct. 6, 2017.

<sup>2</sup> See Docket No. 2017-305-E, Order No. 2017-609, Sep. 28, 2017 (“I would instruct the hearing officer to ask the parties to be prepared to address the preliminary investigation and the evidence to support the request as set out in 58-27-920.”).

challenging prior requests.”<sup>3</sup> The Commission should thoroughly examine and answer these questions.

SCE&G’s assertion that setting the new rate ORS has requested fails to meet the “just and reasonable” standard under South Carolina law and the Takings Clause is wrong. SCE&G repeatedly cites *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 307-08 (1989) to suggest that rate suspension would jeopardize SCE&G’s financial integrity, and is therefore confiscatory. Yet the court in *Duquesne* specifically observed that after the plants in that case were abandoned, the Administrative Law Judge found “that the [utility’s] decisions in regard to the [canceled plants] at every stage to their cancellation, were reasonable and prudent.” *Id.* at 303. Here, by contrast, information calling into question any conclusion that SCE&G’s decisions were prudent throughout the course of the project and that SCE&G disclosed all material information that might have impacted prior prudency determinations has been recently revealed. *See* 83 A.L.R. 4th 183, § 12[d] (citing decisions where courts and commissions have denied recovery of certain costs where utilities continued nuclear power plant projects past the point that prudence dictated cancellation).<sup>4</sup> Decisions made in the most recent years of the V.C. Summer project, especially when the project deviated from approved schedules in the months before the abandonment announcement, appear particularly vulnerable to being deemed imprudent and unreasonable.

Another key holding in *Duquesne* is that, even where the prudent investor test is applied, “One of the elements always relevant to setting the rate . . . is the return investors expect given the risk of the enterprise.” 488 U.S. at 314 (citing *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944)). SCE&G threatens that the actions of ORS and the Commission could jeopardize

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<sup>3</sup> Docket No. 2017-305-E, ORS Request at 4, Sep. 26, 2017.

<sup>4</sup> *See also* Op. of the Attorney General of South Carolina as to the constitutionality of the Base Load Review Act of 2007, Sept. 26, 2017 (discussing *Duquesne* and its implications given traditional ratemaking under the used and useful test in South Carolina).

the Company, but takes no responsibility for the position it finds itself in. While the risks a utility faces are “in large part defined by the rate methodology,” investors are not immune from bearing the risk of bad investments. *Id.* For years, CCL and its partners repeatedly urged SCE&G to evaluate the costs and risks of its plan to build the V.C. Summer units compared to the costs and risks of alternative resource portfolios featuring energy efficiency and renewable energy.<sup>5</sup> That urging apparently went unheeded, though discovery is needed to the actual state of management’s awareness of risks to customers and shareholders, and the options available for reducing both. On the current record, it appears that, at a minimum, SCE&G neglected to appropriately analyze the potential for delays and cost overruns at V.C. Summer when developing (or presenting) its Integrated Resource Plan—the plan meant to identify the mix of resources that will reliably serve forecasted load at the lowest cost, considering environmental impacts. For SCE&G to now express surprise and distress about the current situation given its repeated failures throughout the project’s history hardly supports dismissal.

SCE&G’s failure to transparently analyze the risk of its resource investment choices underscores the importance of such analyses moving forward. SCE&G has now twice indicated to this Commission that it proposes to build a 500MW or larger natural gas plant, with little explanation as to why such a plant was not considered sooner and why it is the best alternative. It is critical that SCE&G analyze multiple resource portfolios across alternative scenarios and

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<sup>5</sup> Even where SCE&G has compared the economics of completing the nuclear units versus abandoning them in favor of alternatives, SCE&G has always maintained that the analysis was not required. In addition, SCE&G has limited the analysis to a comparison of completing the V.C. Summer units versus building new natural gas units and used a scenario with substantial prices on carbon emissions and a gas price trajectory that is 50% higher than the Company’s base gas forecast. The 2016 update stated that: “SCE&G believes that the most reasonable scenario for planning purposes is the scenario that models a \$15 CO<sub>2</sub> cost and gas prices that are 50% higher than the current SCE&G gas forecast.” PSC Dkt. 2016-223-E, Lynch testimony Exhibit JML-2 at 8. The 2012 and 2015 updates stated that: “SCE&G believes that the most reasonable scenario for planning purposes is the scenario that models a \$30 CO<sub>2</sub> cost and gas prices that are 50% higher than the current SCE&G gas forecast.” PSC Dkt. 2012-203-E, Lynch testimony Exhibit JML-4 at 8; PSC Dkt. 2015-103-E, Lynch testimony Exhibit JML-1 at 7.

utilize consistent outcome metrics to make the lowest-cost, and most reliable and environmentally-sound resource investment and retirement decisions possible.

Energy efficiency is one of the resource alternatives SCE&G repeatedly failed to analyze in the Integrated Resource Planning process. *See* Comments of CCL and SACE in Docket 2017-9-E (May 26, 2017) (explaining that SCE&G has failed to properly present all practical available savings to customers from increased energy efficiency and has instead presented a plan that costs ratepayers millions more in annual bills than would be the case if the Company's energy efficiency programs were as effective as those of peer utilities). In Docket 2016-223-E, SCE&G moved to strike the testimony of a witness who described how an expansion of energy efficiency programs would reduce the energy bill increases caused by the \$852 million construction cost escalation at issue in that docket.<sup>6</sup> And in the most recent SCE&G Demand Side Management Update, Docket 2017-35-E, CCL criticized four straight years of declining performance for the company's energy efficiency portfolio. SCE&G's efficiency portfolio compares poorly to those of other electric utilities in the Southeast, and savings are projected to remain low. The trend was worrying enough for the Commission to "direct the Company to consider implementation of the recommendations of the environmental intervenors, if cost effective." Docket 2017-35-E, Commission Directive (Apr. 27, 2017).

While the emphasis in this docket is on *rates*, SCE&G, ORS, and the Commission can and should consider strategies that will help customers reduce their electricity *bills*. SCE&G's customers continue to pay the highest monthly bills of any medium-to-large investor-owned utility in the nation.<sup>7</sup> Hundreds of SCE&G customers commented or testified last fall that they struggle to pay their bills due to the repeated rate increases under the Base Load Review Act, and

<sup>6</sup> Docket No. 2016-223-E, SCE&G's Motion to Strike Direct Testimony of Alice Napoleon, Sept. 15, 2016.

<sup>7</sup> Ranking of IOUs serving more than 100,000 customers, based on EIA Form 861 data.

sometimes must choose between paying their electric bills and buying food or medicine.<sup>8</sup> Low-income customers, in particular, typically contribute a very high portion of their disposable income toward their energy bills, and experience significant benefits from adopting energy efficiency measures. There are specific, proven measures that SCE&G can take right now to prove its commitment to assisting customers that have suffered under repeated rate increases.<sup>9</sup> In addition, increasing energy efficiency savings to 1.5 percent of residential sales would likely reduce customer bills by about 1.6 percent, on average.<sup>10</sup> By contrast, if SCE&G maintains its projected level of efficiency savings, it will forego \$214 million in net benefits to customers.<sup>11</sup> Any proposed “solution”<sup>12</sup> to this debacle or settlement for this docket should include energy efficiency as a cornerstone.

## CONCLUSION

For all of these reasons, CCL respectfully asks that the Commission deny SCE&G’s Motion to Dismiss.

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<sup>8</sup> See, e.g., Docket No. 2016-223-E, Tr. Vol. 2 (transcript of October 4, 2016 public night hearing in Columbia).

<sup>9</sup> Witness Alice Napoleon in last year’s Base Load Review Act modification docket suggested that SCE&G take the following actions to improve its efficiency programs and ensure they are on par with peer utilities: restore its point of purchase residential lighting program; reinstate its comprehensive whole-home retrofit program; expand its Weatherization Plus pilot program; restore its ENERGY STAR New Homes program; expand the availability and offerings of the Neighborhood Energy Efficiency Program; develop new programs to promote high-efficiency new manufactured housing, increase access to financing for commercial and industrial customers, and incentivize residential high-efficiency appliances; take action to limit non-residential opt-outs; develop a low or no-cost financing program; and implement additional recommendations with regard to strategies to educate customers and increase participation in other energy efficiency programs, such as advertisements, bill inserts, point-of-purchase displays, and presence at community events. Docket 2016-223-E, Tr. Vol. 1, pp. 316-22.

<sup>10</sup> Docket 2016-223-E, Tr. Vol. 1, p. 306.

<sup>11</sup> Docket 2016-223-E, Tr. Vol. 1, pp. 324-25.

<sup>12</sup> SCANA, SCE&G Proposes \$4.8 Billion Solution To Replace New Nuclear Project (Nov. 16, 2017), [https://www.scana.com/docs/librariesprovider15/pdfs/press-releases/11162017-sceg-proposes-\\$4-8-billion-solution-to-replace-new-nuclear-project.pdf?sfvrsn=0](https://www.scana.com/docs/librariesprovider15/pdfs/press-releases/11162017-sceg-proposes-$4-8-billion-solution-to-replace-new-nuclear-project.pdf?sfvrsn=0).

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	)	

I certify that the following persons have been served with one (1) copy of the foregoing Opposition to Motion to Dismiss by electronic mail at the addresses set forth below:

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